

**Statement of Appeal against
Planning Enforcement Notice**

(LPA Ref 16/00580/HHENF)

dated 11 June 2018

and issued by

Stratford on Avon District Council

in respect of

**The erection of a close boarded timber fence
along the North Eastern Boundary at**

Hornbeam House
Brook Street
Fenny Compton
Southam
CV47 2YH

Statement Prepared by

Arq Consulting Limited
10 Village Cottages
Lower Quinton
Stratford upon Avon
CV37 8SH



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1 Reason and Grounds for Appeal against Enforcement Notice

1.0 A copy of the Enforcement Notice dated 11th June 2018 against which this appeal is made is included within Appendix A of this document.

1.1 This appeal is made on Ground (f) of the Planning Inspectorate's Enforcement Notice Appeal guide dated 23rd March 2016:

“That the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach”

1.2 The basis for this ground of appeal are that:

1.2.1 The contested development is very close to development described within and allowed by at least two classifications of permitted development in the General Permitted Development Order 2015:

1.2.1.1 In the case of Class A Development within Part 2 of Schedule 2 (which is defined as '*Minor Development*') the dimension which would prevent its otherwise being permitted in this instance is only one of height. However this aspect, which is normally controlled in the interests of highway safety, has previously been deemed not a reason for objection by the local highways authority.

1.2.1.2 The factor of the fence's material or its design - which can be the only other factor of concern for planning control - is not controlled within Article 2(3) land (Conservation Area) by the same class of permitted development. This, it is contested here, should mean that the LPA's consideration of these aspects should not unduly over-influence their determination of overall planning control, because if the fence were elsewhere within the site or of a lower height within the same location (its current location) it would be classed as permitted development, without control or assessment of its material or design.

1.2.1.2.1 Furthermore, it is noted that, when searching amongst other LPA's websites and application guidance that 'normally' the provision of new fences within Article 2(3) land is generally not considered to be a matter for planning control. However, the removal of such a fence, within such designated areas, more typically is. The remit and extent of planning control and enforcement, in this instance, is therefore out of proportion with the alleged planning breach here contested.

1.2.2 That throughout the planning process, at initial enforcement, at determination, appeal and within the enforcement notice itself the LPA has varied the policy references (and therefore reasoning to support its decisions) for its refusal and subsequent enforcement. The decision to serve an enforcement notice is therefore not a product of sound, consistent, evaluation and judgement throughout the period of the contested fence's existence.

1.2 The basis for this ground of appeal are that (continued):

1.2.3 That having informed the applicant and her agent of the LPA's considering of enforcement action and having directed the agent to the LPA's policy on the same, the flexibility and consultative process to which the policy alludes has not adequately been followed and that the time periods experienced would suggest that the enforcement proceedings have been intentionally intensified, giving the impression that the alleged breach contested here is of more serious importance and of greater public interest than it actually can be.

1.2.4 That removal of the fence - by enforcement action or otherwise - apparently justifiable in the public's greater interest - constitutes a breach of the applicant's '*right to respect for private and family life*' afforded under Article 8 of the European Convention of Human Rights.

2 Property Description and Reasons in Support of (Minor) Development

2.1 Fenny Compton lies between Banbury and Southam and is located within Stratford on avon District Council's Local Planning Authority (LPA). The site is identified in the Location Plan provided within Appendix B.

2.2 Brook Street runs roughly East-West through the village. Although often described by the LPA (and Planning Inspector) as consisting of traditional, period, street edge cottages it also includes properties that date from mid to late 20th Century and have a more suburban relationship with the street. A significant portion of the street boundary delineation is from stone walls of various heights, but there are also street boundary edges formed by timber fences, painted brickwork and render.

The South side of Brook Street - along which the contested fence runs - mostly consists of head height or above boundary walls. Architecturally it contrasts significantly with the very different doors and windows aspect lining much of the North side, which is the local context of merit mentioned in supporting planning refusal and appeal dismissal. It is significant that none of the properties in the immediate vicinity are Listed. Some (as discussed in the appeal statement), although from local stone, are not especially 'old'.

2.3 Hornbeam House, partly dating from C17 but adapted and extended since, is almost at the very Western end of Brook Street.

2.3.1 It is not Listed.

2.3.2 Its relationship to the street has, for some time, been one of screened set back, behind brick walls and (prior to erection of the fence) a very tall hornbeam hedge.

2.3.3 A gable end fronts directly onto the street with three small windows facing it directly across this minor, narrow, one way, thoroughfare.

2.3.4 To the West of this runs a low stone wall with a timber close-boarded fence immediately behind, forming the street boundary to directly adjacent 'Three Ways'. The height of this fence matches that which is contested here.

2.4 The Applicant decided in late 2015 to replace the hornbeam hedge with a more substantial, opaque and permanent boundary, feeling that privacy and security within her home and adjacent garden was very much compromised due to the proximity of the street and the cottages - closely and immediately opposite which directly overlook her home.

2.5 It was not possible to construct the stone wall for which planning approval was achieved (in 16/00341/FUL) because as excavation for the wall's foundation commenced it was discovered that telecom ducts running along and within the property boundary would be put at risk by the applied load of the wall. This is evidenced by the proximity of the green telecom cabinet on the junction of Brook Street and Bridge Street and a conversation between Applicant and Contractor and Agent and Contractor. Unfortunately no photos of the underground ducts were taken or survey notes made. Although lack of this evidence has been cited by the LPA and Planning Inspector as reasons to support dismissal at appeal it should also be noted that no request was actually made for any such evidence by either authority.

2.6 With a pressing requirement for privacy and security and with the approved wall unable to be built, the fence contested here was erected. The applicant felt she had no other option available other than an open area of garden (which as an 'exposed socket' without boundary demarcation and with sudden property setback between two high boundary walls along the street would look equally incongruous and 'suburban' in this specific context) or to plant another hedge (which being generally outside the scope of planning is not a matter for comment or control within the planning system) which would take time. Neither of these options could reliably or expediently deliver the level of privacy and security she felt necessary for full enjoyment of her home.



Top Left: Hornbeam House and Brook Street, looking East from junction with Bridge Street. Note fence along street boundary with 'West Side' in foreground.

Top Right: Green telecom cabinet at boundary, to which underground ducts run along boundary preventing foundation to stone wall.



Centre Top: Hornbeam hedge prior to removal in February 2016. Note significant height of hedge and also its transparency.



Centre Bottom: The Grove. Another property within the Conservation Area with close boarded fence along street boundary (Photo: Google Streetview)

Bottom Left: View of Applicant's garden from private side of fence. Note how planting can soften and reduce impact of fence boarding

Bottom Right: Recent view of fence (June 2018). Climbing roses have been planted and are expected to range over fence panels in order to address criticism of 'starkness'.



3 Permitted Development - A Discussion

3.1 The General Permitted Development Order (GPDO 2015) defines a Conservation Area as Article 2(3) land. Within such areas planning permission is required for some instances of the classifications of 'development' otherwise considered as permitted.

3.2 In other instances it defines restrictions and more limited dimensional constraints to the permitted classifications where the development described is located within Article 2(3) land (Conservation Area).

3.3 The reasoning for requiring planning assessment for development within Conservation Areas (but which is permissible elsewhere) invites question why and to what extent planning control can impact upon householder's abilities to enjoy the amenity that their home provides within such areas.

It necessitates that such development and its planning determination respects the surrounding heritage and suitably sustains it.

However, the extent to which development causes "*less than significant harm*" to the wider heritage context, regardless of necessity for planning control, must depend, amongst other factors, on any other options available to the householder in order for them to enjoy basic rights and freedoms within their domicile.

This is the 'weighted balance' argument discussed at times within the planning process where the intentions of the individual are weighed against the 'public interest' of (protection of) the historic environment.

The 'weighting' given here to this apparent, contextual, public interest has garnered some discussion by the LPA and Planning Inspector.

Any weighting for the case of the individual's rights and freedoms has received far less or no consideration.

3.4 Those that find themselves living within deemed Conservation Areas are often understandably ignorant of such nuances, easily fall foul of the planning control system (while others, undiscovered by planning enforcement or living elsewhere, 'get away with it') and therefore find their own personal tastes, freedoms and expressions of enjoyment of their property under scrutiny, control and ultimately persecution, all the while endorsed by a Planning Authority upholding 'public interest' under their deemed remit of control.

3.5 When forms of development elsewhere may more obviously and physically impact upon the wider community in terms of noise, safety, pollution, disturbance etc. the public interest dimension is clear.

However within Conservation Areas the public interest is typically far less clear. It is a matter of value judgement determined largely by the interpretation of and relative importance given over to traditional precedent, ultimately by those (specialist Planning Conservation Officers) with an enhanced appreciation for it. Its consideration and protection has therefore become a matter of great sensitivity (and fear for its protection) simply because its dimensions are abstract and intangible.

Therefore, those less familiar with its nuances may feel, when administering control within its borders, obliged to err on the side of caution.

3.6 The spirit of Permitted Development, when considered beyond its otherwise clear limits of statute definition, then necessarily referred to the LPA for assessment, can therefore become distorted within the Article 2(3) context; Instead of being a vehicle to enable householders to freely adapt, enjoy and utilise their home within clearly defined boundaries it becomes a vague, interpretive, opinionated and bureaucratic control, leading to unnecessary confusion and frustration - particularly for the householder.

Their understandable ignorance of such nuanced controls and inability to access reliable advice in respect of potential conflict between their development intentions (that they would be able to freely enjoy elsewhere) is at the core of the planning control interest contested here.

3.7 Planning control of otherwise permitted development classifications within Article 2(3) land must therefore reside within a 'grey area': One between which development is universally considered necessary for planning control because of its potential for public nuisance. And at another boundary where outside the Conservation Area it would generally be permitted without need for assessment by a planning authority.

The LPA and wider planning system must then be able to provide adequate, substantial, balanced and quantifiable reasoning for its decisions to exercise control within these areas. In so doing it seems pragmatic to make reference to factors which would otherwise be permitted elsewhere and to justify the special control of only that sub-set which statute or policy clearly indicates as being contentious.

3.8 Class E Development within Part 1 of Schedule 2 Allows development of

“any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such...”

The classification’s requirements include some dimensions in respect of the enclosure’s relationship to the boundary, its height and volume, all of which the fence would comply with.

3.9 Paragraph E.1(c) removes the right of permitted development if

“any part of the...enclosure...would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse”.

3.10 Paragraph E.3, significantly on Article 2(3) land removes the right of permitted development

“if any part of the...enclosure...would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse.”

3.11 The definition of the relationship between the boundary with the highway, the ‘front’ or ‘principal elevation’ and ‘side’ elevation in respect of this class of permitted development therefore is of importance. The gable end of Hornbeam House, being located on the highway boundary and directly addressing it would therefore define it as being the principal elevation. The fence is not situated forward of this line so paragraph E.1(c) does not restrict development in this instance.

3.12 The extent to which the fence is located on land between the side of this principal elevation and the boundary facing it raises the question of the extent to which the highway boundary line itself is within this zone or not. Paragraph E.3 has been derived in order to restrict development of enclosures within such land. The fence is just on the boundary line between it and something else - (in this case)

highway.

3.13 Certainly in terms of height and relationship to the building and the highway this development would be allowable Permitted Development were it outside of the Conservation Area. A fence is enclosure, regardless of whether it surrounds a discrete element such as a pool, screens a waste storage area or provides privacy within a private garden.

3.14 In past tests of the appropriate nature (or not) of this classification of development and whether it falls under permitted development or not the issue of the *“purpose incidental to the enjoyment of the dwellinghouse”* has been raised. It is clear, in this instance, that privacy and security within one’s garden and home, which an enclosing screen such as the fence might provide, is entirely necessary for the Applicant’s enjoyment of her home, incidentally or otherwise.

3.15 Class A Development within Part 2 of Schedule 2 permits

“The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.”

Such development is permitted provided it does not exceed a 2 metre height limit or 1 metre where adjacent to a highway.

3.16 Critically for this particular case the Permitted Development classification does not place any further restrictions on such development when within a Conservation Area.

3.16.1 It does not stipulate the material or design of such a fence.

3.16.2 It does not stipulate at what distance adjacency to the highway this dimension becomes relevant (or not). Were the applicant’s fence to be moved a short distance ‘back’ into the site would it still be considered adjacent to the highway ?

3.16.3 The question of why a fence’s proximity to a Highway is important therefore necessitates further consideration here:

3.17 The significance of enclosure, such as the fence contested here, where its height is between 1 and 2 metres and is 'adjacent to the highway' is an issue relating only to the safety of the highway users. Use of the highway, in terms of the type of vehicles which travel along it and the extent to which those users are subject to any greater or lesser risk due to any development beyond the highway boundary is a matter for assessment by the Local Highways Authority - in this case Warwickshire County Council.

In their assessment of the safety impact of the approved application for a wall, of the same height as the fence now contested, their opinion was that it is unlikely that the proposed wall will obstruct visibility splays any more than they are currently being obstructed. In conclusion the Highways consultee raised no objection. (Please refer to Appendix C).

3.18 Therefore, having reviewed the contested development in terms of Class E Development within Part 1 of Schedule 2 and Class A Development within Part 2 of Schedule 2 of the current General Permitted Development Order, the reasoning for planning refusal, in terms of public interest, weighed against that which is normally permitted becomes unclear. As a fence of around 2m in height it necessitates planning approval because of location adjacent to a highway, although the Highways authority raised no objection to a wall of similar height. In terms of its material, were it lower, it would be outside of the LPA's control and permitted. In terms of its necessity as an enclosure to enable the reasonable enjoyment of the dwelling it has a permissible *principle* (except that here it is located, questionably, to the side of a principal elevation AND it is within a Conservation Area).

3.19 However, the LPA and the appointed Planning Inspector for appeal APP/J3720/D/17/3170381 maintain that the fence is an incongruous, intrusive feature within the Conservation Area. When considered and weighed against that allowed by permitted development in this location and assessed by the Local Highways Authority however they can only rightly concern themselves with a strip of close boarded timber between 1m and 2m above ground level and only then, largely in terms of its impact on Highway Safety. The material from which the fence is constructed could not be a determinant for control if it were restricted to a lower level (or located elsewhere on the site). That it becomes an issue in this exact location requires special justification and argument for readily perceptible 'harm', not just that based on 'opinion' alone.

If so, the same harm contributes to the protected context on the continued boundary immediately to the West of the property. While those determining the retrospective application, the appeal and now enforcement may feel that the public interest is compromised because of the 'look' of the fence, it must be concluded that it is only that part which is above 1m in height and at the side of the property that brings it, marginally, even within the scope of planning control. Importantly the determinants of Class A Part 2 Schedule 2 make no issue for control over the fence's material within a Conservation Area and consider such walls, fences or gates, once away from the highway boundary yet within a Conservation Area, to be acceptable.

3.20 Finally it is reiterated that permitted development within Class A Part 2 Schedule 2 is considered to be 'Minor'. Any control or enforcement should recognise this and be clear about such status, taking only such actions as would be commensurate with this statutorily defined scale of impact.

4 Planning History

4.1 15/04088/TREE 13 November 2015 Application approved for removal of hornbeam hedge in location where the contested fence has now been erected. Determination of this application confirmed that removal of the hedge was outside of planning control. In terms of height the hedge was in any case, at recent times, of the order 3.5 metres high.

4.2 16/00341/FUL 15 April 2016 Application approved for construction of stone boundary wall. As mentioned above the local Highways Authority were consulted and raised no objection to its height. No objections or issued were raised and no significant conditions applied to the approval.

4.3 Between April and September 2016 a contractor appointed to construct the wall found telecom ducts adjacent to boundary and determines construction of a boundary wall to be unfeasible. In response to this and to maintain security and privacy at the site the applicant arranged for a 2m high, high quality, timber fence to be erected.

4.4 Initial enforcement action commenced in September 2016 as the fence was considered to be in breach of planning control.

4.5 16/03041/FUL 14 October 2016 a retrospective planning application was registered for the fence.

4.6 6 October 2016 The application was stalled requesting an archaeological study. Agent makes the point that the application is retrospective, the fence already exists and so any future impact on archaeological remains is irrelevant.

4.7 14 October 2016 Application 16/03041/FUL was made valid.

4.8 16 November 2016 the Agent was informed by the LPA's determining officer that she is minded to refuse permission as it is in conflict with policies CS.8 (Historic Environment) and CS.20 (Existing Housing Stock) of the LPA's Core Strategy 2011 - 2031. (Please refer to Appendix D)

4.8.1 Policy CS.20 Relates to the management, alterations and renovation of existing housing stock. It is hard in all but the most tenuous of connections to see how and why the fence might be in conflict with this particular policy statement.

4.9 16 November 2016 the Agent requested advice as to what might be acceptable, as the previously approved wall would not physically be possible to construct and if minded not to approve the fence the applicant would be left compromised in terms of privacy and security.

4.10 23 November 2016 the Planning Officer suggested that a 1m high enclosure would be allowable under permitted development. (Please refer to Appendix E)

4.11 9 December 2016 Application 16/03041/FUL was formally Refused as it conflicts with Policies CS.8 (Historic Environment), CS.9 (Design and Distinctiveness) and CS.12 (Special Landscape Areas - SLA) - specifically by being within the Cotswold Fringe SLA.

4.12 Policy CS.9, as outlined within the LPA's Core Strategy document (paragraph 3.8.2) determines that

"Since no two places are identical, there is no such thing as a blueprint for good design..."

The supporting Heritage, Design & Access statement submitted with the retrospective application made reference to how the fence lines through with that forming an adjacent boundary and matches it in terms of its selected, natural, material. (Domestic means of enclosure, regardless of material and without becoming indicative of other structural forms are inevitably limited in terms of their design in any case.)

5 Planning Appeal

5.1 APP/J3720/D/17/3170381 planning appeal was submitted on 26 February 2017

5.2 The appeal was dismissed on 2nd June 2017

5.3 The basis for appeal was that policies CS.8 (Historic Environment) and CS.9 (Design and Distinctiveness) have only tentative relevance to 'minor development' such as a fence.

5.3.1 The height (as discussed above) is not a highways safety concern and that there are existing similar fences (in terms of height, material and design) to street boundaries elsewhere within the Conservation Area, most notably directly adjacent to the application site.

5.4 Furthermore CS.12 Special Landscape Areas, also used to support the determination to refuse, does not apply to the site in terms of it being specifically within any designated Cotswold Fringe SLA. Core Strategy Policy does not appear to define the extent or any special controls that apply within such areas and there is a lack of clarity surrounding the relevance of this particular policy in respect of the development contested.

5.5 The Planning Inspector's Report (Please refer to Appendix E) reinforces and supports the LPA's decision:

5.5.1 His report states the Policy CS.12 applies, claiming the site IS within Cotswolds Special Landscape Area (Paragraph 7) - it does not appear to be insofar as such definitions are published by the LPA in terms of this particular policy. There may be some confusion between the *Cotswold Fringe Landscape Character Area* described in the LPA's Design Guide of 2001, although any direct connection between this and more recent policy documentation is not made clear. Fenny Compton may well be within a differently defined SLA, but even so, the Inspector seems convinced that this Policy is relevant, but does not cite the reference source which underpins this, or elaborate as to why this aspect adds weight to his own or the LPA's decision.

5.5.2 In Paragraph 10 he states that (the fence) *“due to its height, length and close-boarded timber materials, appears out of keeping with its setting along this part of Brook Street, where no similar boundary features exist.”* No mention is made of a fence similar in height, length and close-boarded timber material *directly adjacent to it*. This aspect should at least have carried some weight within his assessment. Otherwise his reasoning reads as a wilful distortion of reality.

5.5.3 Paragraphs 14 & 15 suggest that the fence, when weighed against any public benefit, is not the only means of providing privacy and security. With regard to the foundation findings and physical unsuitability of the wall however no suggestion is offered as to what more suitable alternative means might be acceptable.

5.5.4 The Inspector's report does not make any mention of the fence's proximity to the highway, any associated safety concerns thereby or make reference to the GPDO classifications which in fact would in fact weigh somewhat against need for planning control. Instead the dismissal is framed very much in terms of an amplification of the LPA's concern for protection of the historic environment and somewhat over-justifies the importance of it in this location and in respect of this 'minor development'.

5.6 The appeal was formally dismissed on 2nd June 2017

6 Planning Enforcement

6.1 The planning enforcement process re-started very soon after the appeal decision, with an emailed request for details of how the breach would be remedied and to what timescale on 5th June 2017

6.2 Further requests for updates were made on 25th July and 29th August 2017

6.3 No further enforcement action or enquiry appears to have been made until 23 May 2018 when a letter was received by the applicant informing her that the LPA *“proposes to take formal enforcement action”*, but then tempers this by referencing that *“...if an Enforcement Notice is issued...”* in the following paragraph.

6.3.1 This Letter does however suggest that the LPA are *“always prepared to give advice and assistance”*. (Please see Appendix F)

6.3.2 The agent contacted the Enforcement Officer to request advice, but apart from signposting the LPAs own enforcement policy - which supports the following objectives:

6.3.2.1 Paragraph 5.20, in discussing the process towards making an enforcement notice recommends

“(to) negotiate changes to a development to make it more acceptable in planning terms. These negotiations may negate the need to take formal enforcement action.”

6.3.2.2 Paragraph 5.23, in discussing the extent and nature of harm caused by the unauthorised development recommends that

“The type of enforcement action to be taken will be dependent on the circumstances of the case. The type of action taken must also be proportionate to the nature of the breach of planning control.”

6.3.2.3 Paragraph 5.26:

“A reasonable balance therefore needs to be achieved, between protecting amenity and other interests of acknowledged importance and enabling acceptable development to take place, even though it may initially have been unauthorised. Where the balance of public interest lies will vary from case to case”

6.3.2.4 Finally, Paragraph 5.27 acknowledges that

“In considering whether to take enforcement action, the Council must also take into account the Human Rights Act 1998 and the Articles contained therein with particular reference to the Right to a Fair Trial, the Right to a private family life and the protection of property.”

6.3.3 No advice was given other than the statement that *“The District Council is considering Enforcement action.”*

6.4 A letter was sent by agent, in response, dated 7th June (Please refer to Appendix G) which offered some of the background to the planning history to date. The final paragraph of this letter makes it clear that the applicant wishes to avoid an enforcement notice and discuss with the LPA some way of ameliorating the impact of the fence.

6.5 The agent received an email from the enforcement officer on 11th June explaining that the fence contravened planning policy due to its height and location. The email includes the line:

“I would advise that the above planning enforcement case will be reviewed as matters progress.”

6.6 On that same day, 11th June, the applicant was issued with the Enforcement Notice against which this appeal is made.

6.7 The reasoning given for issue of the enforcement notice is detailed within Appendix A. However it is of note that the policies which it is in contravention with, at this stage, are only CS.8 (Historic Environment) and CS.9 (Design and Distinctiveness). Further, although the phrase *“less than substantial harm”* is introduced in respect of item 4.2 of the notice, the wording is very clear, in respect of contravention with both policies, that *“harm”* is being done.

6.8 The timings involved, dismissal of any offers made to negotiate, discuss or thoroughly consider any attempts to ameliorate the *“unduly dominant stark urban feature”* - which the fence apparently constitutes - does not suggest that this enforcement action is within the ‘Desirable’ priority category (in the LPA’s Enforcement Policy), which suggests it allows for some flexibility in resolution. By definition the alleged breach does not reside within the ‘Critical’ or ‘Significant Impact/High Public Interest’ categories of the policy.

6.9 In the 23 months between the erection of the fence and issue of enforcement notice the fence was ‘immune’ from enforcement action for 3 months towards the end of 2016 while a retrospective application was being determined and for 4 months in early 2017 during the appeal process. If 2 months, between application refusal and appeal submission are added to this period, the fence has been ‘immune’ from enforcement action for 9 months out of 23, or 40% of the fence’s time of existence. The remainder of time during which the fence has stood has been taken up with occasional enforcement calls and emails (estimated to be no more than 3 or 4 in number) over a period of perhaps 4 months. In the last two of these 23 months the enforcement notice has been suggested as ‘being considered’. Immediately after this the Enforcement Notice was issued and served. This leaves 8 months during which the fence has been (allegedly) ‘harming’ the neighbourhood, yet no reports or comments have been made about it. In 23 months of its existence it has not, to the best of the applicant or agent’s knowledge raised a single complaint from the public. One neighbour has in fact expressed support for it - in preference to the hedge which preceded it. (Please refer to Appendix H). The fence’s impact would therefore measurably amount to a neutral to positive public interest amongst those for whom its existence impacts on a daily basis. It is of note that at retrospective application and subsequent appeal neighbours were directly invited to express any concern over it - but chose not to.

6.10 The only individuals who sense, perceive or appreciate the harm which the LPA is now so keen to eradicate are a local councillor (who personally expressed his concern with an objection during the retrospective application), the Planning Inspector and Officers of the Local Planning Authority. Their considerable aversion to the fence throughout the last, almost 2 years, must now be considered in balance against the period which the applicant has enjoyed the freedom and rights of privacy and protection for her home and garden. All the while the fence has caused no nuisance, upset or discomfort to those who live near it, no doubt seeing it every day.

6.11 However, the removal of the fence, by force if necessary it seems, will only serve to cause upset for the applicant for now and in the future. Its removal will not provide any great, discernably positive advantage to the surrounding neighbours, to the streetscene, to those who visit the village or even, it could be argued, necessarily those who have a greater appreciation for the experiential qualities of the Conservation Area.

6.12 Removal will of course enable the LPA's enforcement team to 'tick a box' with regard to their demonstration of effective planning control, albeit on somewhat insubstantial and questionable grounds. It would, however, be far more valuable, with all other factors considered, for the LPA to take a more positive, conciliatory line, considering the householder applicant and the breach of 'minor' development: To engage in negotiation and discussion over the potential for planting, staining, time limitation or some other approach to find a way to ameliorate the claimed 'starkness' demonstrates a more valuable, positive relationship amongst those finding themselves living within the Conservation Area community and sets a precedent for an approach which acknowledges the importance of the historic environment, but also recognises that people live within it.

Miles Forsyth
Arq Consulting Ltd

on behalf of

Kaja Bjelke-Jones

Appellant
12 July 2018

Appendix A

**Planning Enforcement Notice issued 11 June 2018
Stratford on Avon District Council ref 16/ 00580/ HHENF**

Direct Line :01789 260326

Fax : 01789 260207

e-mail : clare.eynon@stratford-dc.gov.uk

My ref : 16/00580/HHENF

Your ref :

Date : 11th June 2018

Ms K Holmboe
Hornbeam House
1 Brook Street
Fenny Compton
Southam
CV47 2YH



Robert Weeks
Head of Planning and Housing

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

Dear Sir/Madam,

Town and Country Planning Act 1990 (as amended)
Enforcement Notice at:
Hornbeam House, 1 Brook Street, Fenny Compton, Southam, CV47 2YH

This Council has issued an enforcement notice relating to the above land and I now serve on you a copy of that notice as you have an interest in the land, together with two further copies for you to use in a possible appeal application.

There is a right of appeal to the Secretary of State (at The Planning Inspectorate) against the notice. Unless an appeal is made, as described in these enclosures, the notice will take effect on **16 July 2018** and you must then ensure that the required steps, for which you may be held responsible, are taken within the period specified in the notice.

Please see the enclosed **information sheet** from The Planning Inspectorate which advises you how to make an appeal and please carefully read the **Annex** to the Enforcement Notice which informs you of your right to appeal.

Yours faithfully

A handwritten signature in dark ink, appearing to be 'CE' or similar initials.

Clare Eynon
Planning Manager
(Performance, Appeals and Enforcement)

Encs: 3 copies of Enforcement Notice
1 Information Sheet from The Planning Inspectorate

Elizabeth House
Church Street
Stratford-upon-Avon
CV37 6HX

telephone 01789 267575

minicom 01789 260747

website www.stratford.gov.uk

DX700737 STRATFORD-ON-AVON 2

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

**TOWN AND COUNTRY PLANNING ACT 1990
(as amended by the Planning and Compensation Act 1991)**

ENFORCEMENT NOTICE

ISSUED BY: STRATFORD-ON-AVON DISTRICT COUNCIL ("the Council")

1. **THIS IS A FORMAL NOTICE** which is issued by the Council because it appears to them that there has been a breach of planning control, within paragraph (a) of section 171A(1) of the above Act; at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the notice and enclosures to which it refers contain important additional information.

2. **THE LAND AFFECTED**

Hornbeam House, 1 Brook Street, Fenny Compton, Southam, CV47 2YH ("the Land"), shown edged red on the attached plan ("the Plan")

3. **THE BREACH OF PLANNING CONTROL ALLEGED**

Without planning permission the erection of a close boarded timber fence measuring approximately 2.5m in height adjacent to a highway used by vehicular traffic (in the approximate position marked A-B on the Plan).

4. **REASONS FOR ISSUING AN ENFORCEMENT NOTICE**

It appears to the Council that the above breach of planning control has occurred within the last 4 years.

1. The unauthorised fence by reason of its design, height and position is considered to introduce harm to the character of the area experienced within the 'locality' of Brook Street and would represent an unduly dominant stark urban feature which is at odds with the materials experienced within the streetscene and detracts from the cottages on the opposite side of Brook Street. The development is therefore considered to be contrary to Core Strategy Policy CS.9 of the adopted Stratford on Avon Core Strategy (2017-2031) and the guidance contained within the Council's District Design Guide and 'Extending Your Home' Planning Advice Note (2008).
2. The unauthorised fence by reason of its solid design, height and position is considered to introduce harm to the character of the area experienced within the 'locality' of Brook Street and would represent an unduly dominant stark urban feature which is at odds with the materials experienced within the streetscene and detracts from the cottages on the opposite side of Brook Street.

The unauthorised development is considered to introduce 'less than substantial harm' to the setting and special interest of the Conservation Area.

In the absence of any public benefits which outweigh the harm identified the development is contrary to Core Strategy Policy CS.8 of the adopted Stratford on Avon Core Strategy (2017-2031).

The District Council does not consider that planning permission should be granted because planning conditions could not overcome the objections to the development.

5. **WHAT YOU ARE REQUIRED TO DO**

- a) Remove the fence along the alignment A-B from the Land.

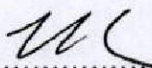
6. **TIME FOR COMPLIANCE**

- a) Within 4 months from the date this Notice takes effect

7. **WHEN THIS NOTICE TAKES EFFECT**

This notice takes effect on **16 July 2018** unless an appeal is made against it beforehand.

Dated: 11 JUNE 2018

Signed.....
Clare Eynon - Planning Manager
(Performance, Appeals & Enforcement)

On behalf of:-

Stratford-on-Avon District Council,
Elizabeth House,
Church Street,
STRATFORD-UPON-AVON,
Warwickshire. CV37 6HX



16/00580/HHENF
Hornbeam House, 1 Brook Street, Fenny Compton, Southam, CV47 2YH

Scale 1:500



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Ordnance Survey 100024287



ANNEX

YOUR RIGHT OF APPEAL

If you decide that you want to appeal against the enforcement notice you must ensure that you send your appeal soon enough so that normally it will be delivered by post/electronic transmission to the Secretary of State (at The Planning Inspectorate) before **16 July 2018**.

Under section 174 of the Town and Country Planning Act 1990 (as amended) you may appeal on one or more of the following grounds:-

(a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;

(b) that those matters have not occurred;

(c) that those matters (if they occurred) do not constitute a breach of planning control;

(d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;

(e) that copies of the enforcement notice were not served as required by section 172;

(f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;

(g) that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

Not all of these grounds may be relevant to you.

If you appeal under Ground (a) of Section 174(2) of the Town and Country Planning Act 1990 this is the equivalent of applying for planning permission for the development alleged in the notice and you will have to pay a fee of £412 for the deemed application. You should pay the full amount of the fee to Stratford-on-Avon District Council.

If you decide to appeal, when you submit it, you should state in writing the ground(s) on which you are appealing against the enforcement notice and you should state briefly the facts on which you intend to rely in support of each of those grounds. If you do not do this when you make your appeal the Secretary of State will send you a notice requiring you to do so within 14 days.

If you submit a retrospective planning application after the enforcement notice is issued, the Local Planning Authority may decline to determine your application under section 70C of the Act (as amended). You cannot appeal against a decision to decline to determine your planning application. Therefore if the Local Planning Authority does decline any retrospective application the only way you could ask for the planning merits of the alleged development to be considered is to appeal on ground (a) on your enforcement appeal and pay the fee.

However if you (or anyone else) had already submitted a retrospective planning application and the enforcement notice is issued before the time to decide the application has expired, no-one can appeal against the enforcement notice on ground (a). Although a planning appeal can be pursued if the Local Planning Authority refuse or fail to determine the planning application. This is specified at section 174 (2A)(b) of the Act (as amended).

The Planning Inspectorate has published new guidance on how to Appeal against an Enforcement Notice. It relates to all Notices served on or after 6 April 2012.

WHAT HAPPENS IF YOU DO NOT APPEAL

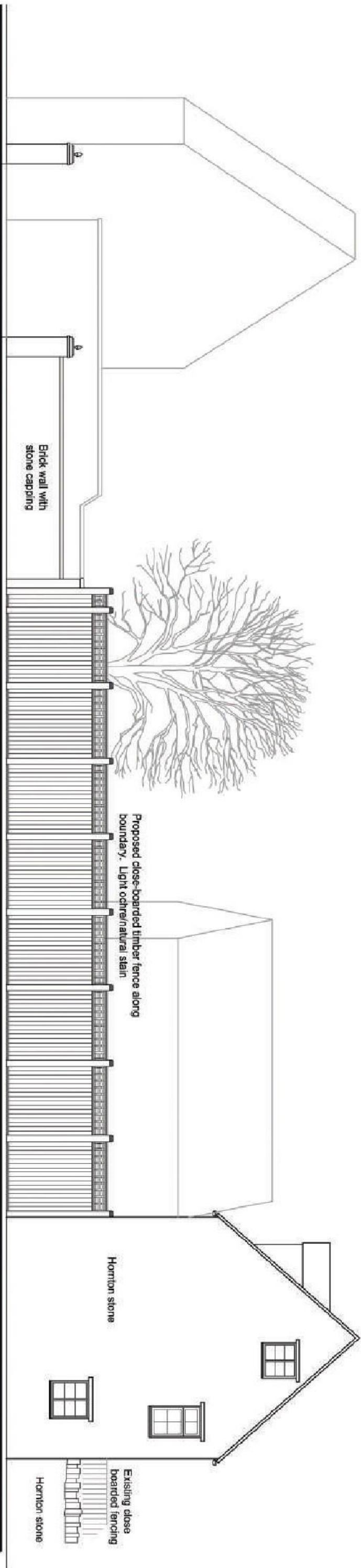
If you do not appeal against this enforcement notice, it will take effect on **16 July 2018** and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.

LIST OF NAMES AND ADDRESSES OF THE PERSONS ON WHOM A COPY OF THE ENFORCEMENT NOTICE HAS BEEN SERVED

Ms Kaja Lisen Holmboe
Hornbeam House
1 Brook Street
Fenny Compton
Southam
CV47 2YH

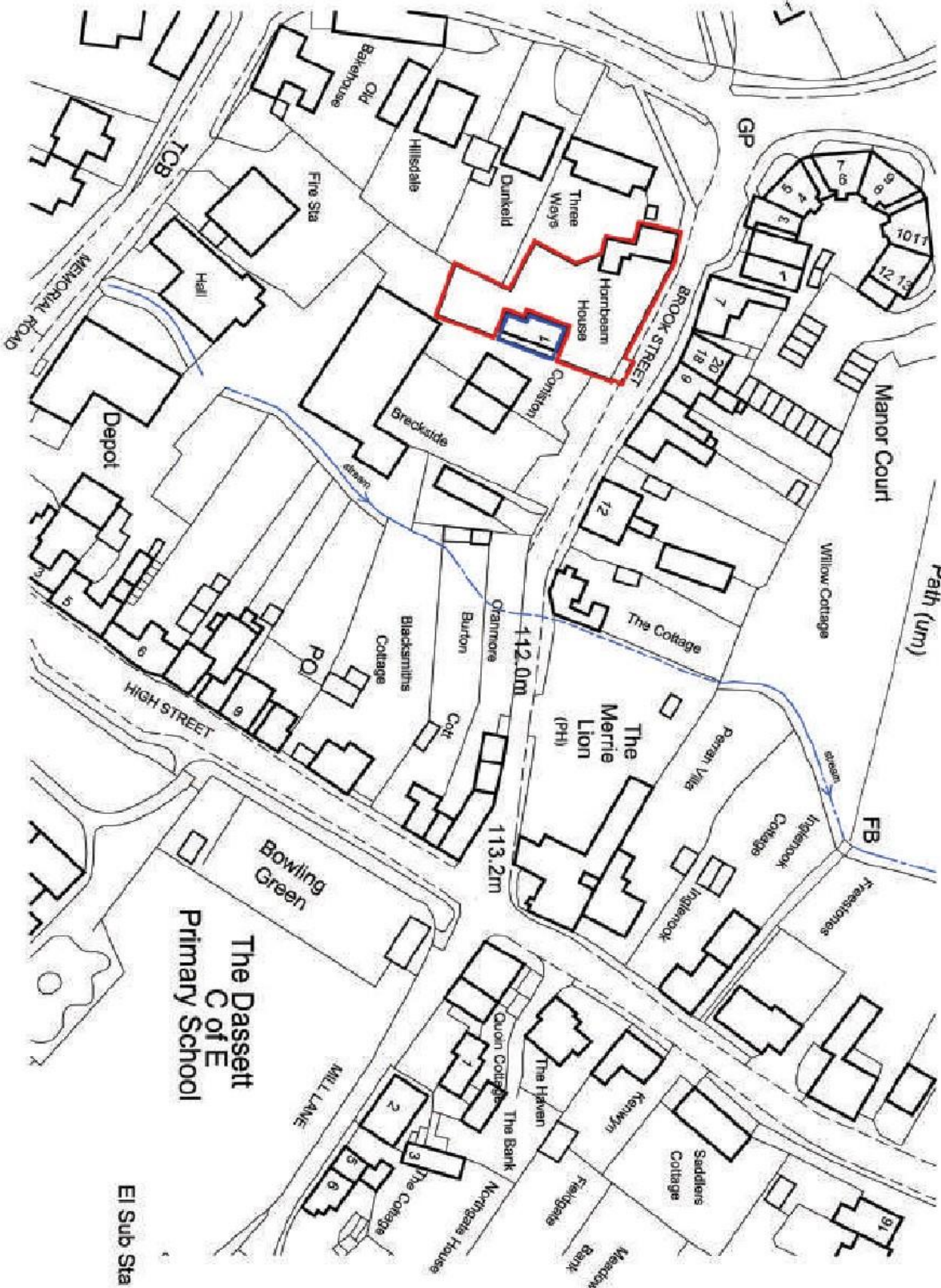
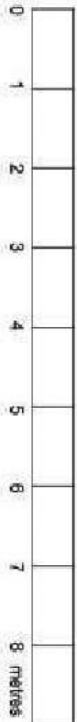
Appendix B

Location Plan showing site edged in red

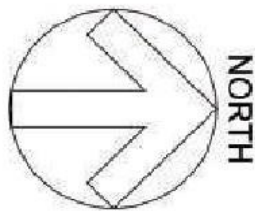
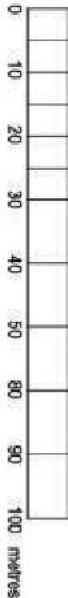


HORBEAM HOUSE

PROPOSED NORTH EAST ELEVATION 1:100



LOCATION PLAN 1:1250



Appendix C

Letter from Warwickshire County Highways, dated 09 March 2016 and raising no objection in respect of height of boundary wall approved under 16/ 00341/ FUL

Your ref: 16/00341/FUL
My ref: 160341
Your Letter Sent: 24/02/2016



Communities Group

PO Box 43
Shire Hall
Warwick
CV34 4SX

Tel: (01926) 412386
Fax: (01926) 412641
benmalin@warwickshire.gov.uk
www.warwickshire.gov.uk

Robert Weeks
Head of Environment and Planning
STRATFORD-ON-AVON DISTRICT COUNCIL
Elizabeth House, Church Street
Stratford-upon-Avon
CV37 6HX

FAO : Ian Guffick

09 March 2016

Dear Mr Weeks

PROPOSAL: Construction of a garden wall in stone in keeping with the house wall. From the edge of the house wall facing the road to join existing stone wall at driveway entrance. To the height of the existing driveway wall height.

LOCATION: Hornbeam House, 1 Brook Street, Fenny Compton, CV47 2YH.

APPLICANT: Mrs Kaja Holmboe

It is likely that the proposed wall would obstruct visibility splays for vehicles egressing from the access however, visibility splays are currently obstructed by the existing boundary wall. Therefore, it is unlikely that the proposed wall will obstruct visibility splays any more than they are currently being obstructed.

Therefore, the response of Warwickshire County Council as the Local Highway Authority to the above application is one of **NO OBJECTION**.

Yours sincerely

B. Malin

Ben Malin
Planning & Development Group

CC – Cllr Williams - For information only

*Working for
Warwickshire*

Appendix D

**Copy of emails dated 16 and 23 November 2017 between Agent and Planning
Officer in respect of 16/ 03041/ FUL**

Subject: 16/03041/FUL Hornbeam House
From: Lindsey Young <Lindsey.Young@stratford-dc.gov.uk>
Date: 16/11/16 11:06
To: "'miles@arq.me.uk'" <miles@arq.me.uk>

Dear Mr Forsyth

Having carried out a site visit and a desk assessment at the above site, I regret to inform you that I am recommending refusal of the application. This is because the erected fence causes visual harm to the character of the area and less than substantial harm to the heritage asset (Conservation area), and is therefore contrary to policy CS.8 and CS.20 of the Core Strategy.

Kind Regards

Lindsey Young
Assistant Planner

Stratford on Avon District Council, Elizabeth House, Church Street, Stratford upon Avon, Warwickshire CV37 6HX

Tel: +44 (0)1789 260309 **Fax:** +44 (0)1789 260306

e-mail: lindsey.young@stratford-dc.gov.uk **web:** www.stratford.gov.uk

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Unless expressly stated otherwise, the contents of this e-mail represent only the views of the sender and do not impose any legal obligation upon the Council or commit the Council to any course of action.

Subject: Re: 16/03041/FUL Hornbeam House
From: Miles Forsyth <miles@arq.me.uk>
Date: 16/11/16 11:47
To: Lindsey Young <Lindsey.Young@stratford-dc.gov.uk>

Good morning Lindsey

Thank you for your email.

With the proviso that I've not read CS.8 or CS.20 (yet, but will) I'm interested (in order to fully inform my clients) to drill down into the specifics of why a stone wall WAS acceptable (in February) but a fence in September IS NOT. Is it therefore specifically the material that does not comply in this instance (i.e. it is not a matter of enclosure, height, impact on street scene by virtue of its inherent opacity) ?

There is a similar fence directly adjacent to the application property, at a similar height. A wall of the same height has been previously approved. The wall was preferable, but could not be built because of the presence of an underground cable (not a Planning matter perhaps, but a physical, pragmatic one).

So, the decision to refuse leaves the applicants with a problem - they wish to maintain privacy within their garden, but are only 'allowed' to have a wall which cannot physically be constructed, or seemingly, an open boundary (for which there isn't a great deal of precedent and would possibly look more 'wrong' than the fence, (especially against the rest of the property which is in fact walled)).

Is the LPA therefore saying that a row of evergreen Leylandii would be acceptable ? A chainlink wire fence ? A lower timber fence ? The 'Heras' security fence that was, apparently at one time temporarily in place ?

Sometimes, while the decision to refuse is perhaps well-grounded in policy and procedure, there must also be a responsible element of the decision which considers what happens next. There is an intention/desire here to visually screen a garden. This is not an unreasonable thing to want to do. The options as to how to do this are now becoming limited. It may not be the LPA's place to decide exactly what is appropriate and 'tell' an applicant what they CAN have, but in this instance it seems somewhat incumbent (to me, as agent, at the least) that the LPA DO suggest something other than just saying 'No'.

My initial reaction is to recommend my clients appeal the decision, since it is only a fence (and not an especially 'out of keeping' one at that) and that in reality whilst there is no significant harm done to the environment, the alternatives might in fact 'look' far worse and visually create more significant harm. I do appreciate that there is an 'only doing my job' aspect to all of this, but offering some way forward would, at this juncture, be very much appreciated please.

With thanks for your early indication of decision and kind regards, I do look forward to some further discussion on this one

Miles Forsyth
Arq Consulting

On 16/11/16 11:06, Lindsey Young wrote:

Dear Mr Forsyth

Having carried out a site visit and a desk assessment at the above site, I regret to inform you that I am recommending refusal of the application. This is because the erected fence causes visual harm to the character of the area and less than substantial harm to the heritage asset (Conservation area), and is therefore contrary to policy CS.8 and CS.20 of the Core Strategy.

Kind Regards

Lindsey Young
Assistant Planner

Stratford on Avon District Council, Elizabeth House, Church Street, Stratford upon Avon, Warwickshire CV37 6HX

Tel: +44 (0)1789 260309 **Fax:** +44 (0)1789 260306

e-mail: lindsey.young@stratford-dc.gov.uk **web:** www.stratford.gov.uk

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Unless expressly stated otherwise, the contents of this e-mail represent only the views of the sender and do not impose any legal obligation upon

Subject: RE: 16/03041/FUL Hornbeam House
From: Lindsey Young <Lindsey.Young@stratford-dc.gov.uk>
Date: 23/11/16 10:55
To: 'Miles Forsyth' <miles@arq.me.uk>

Dear Mr Forsyth

The main reason is the use of materials, it is considered that the wooden fence is not in keeping with the character of the area. Having carried out the site visit, I did not see any fences in the immediate area, I have carried out a history search and have found no permissions for fences, so it is likely that no consent has been given the fence you mention.

Under permitted development a 1m high enclosure can be erected without planning permission adjacent to highway.

Can the underground cable not be moved? Or the permitted wall move so as not to disturb the cable?

As it stands the application is being recommended for refusal. Please advise if you would like to withdraw the application or receive the refusal notice for which you have the right to appeal.

Kind Regards

Lindsey Young
Assistant Planner

Stratford on Avon District Council, Elizabeth House, Church Street, Stratford upon Avon, Warwickshire CV37 6HX

Tel: +44 (0)1789 260309 **Fax:** +44 (0)1789 260306
e-mail: lindsey.young@stratford-dc.gov.uk **web:** www.stratford.gov.uk

Please do not print this email unless absolutely necessary.

From: Miles Forsyth [mailto:miles@arq.me.uk]
Sent: 16 November 2016 11:48
To: Lindsey Young
Subject: Re: 16/03041/FUL Hornbeam House

Good morning Lindsey

Thank you for your email.

With the proviso that I've not read CS.8 or CS.20 (yet, but will) I'm interested (in order to fully inform my clients) to drill down into the specifics of why a stone wall WAS acceptable (in February) but a fence in September IS NOT. Is it therefore specifically the material that does not comply in this instance (i.e. it is not a matter of enclosure, height, impact on street scene by virtue of its inherent opacity) ?

There is a similar fence directly adjacent to the application property, at a similar height. A wall of the same height has been previously approved. The wall was preferable, but could not be built because of the presence of an underground cable (not a Planning matter perhaps, but a physical, pragmatic one).

Appendix E

**Planning Inspectors Report in respect of dismissal of APP/ J3720/ D/ 17/ 3170381
dated 02 June 2017**

Appeal Decision

Site visit made on 25 May 2017

by N McGurk BSc (Hons) MCD MBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 02 June 2017

Appeal Ref: APP/J3720/D/17/3170381

Hornbeam House, Brook Street, Fenny Compton, CV47 2YH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Kaja Holmboe against the decision of Stratford-on-Avon District Council.
 - The application Ref 16/03041/FUL, dated 14 September 2016, was refused by notice dated 9 December 2016.
 - The development proposed is described as a "retrospective householder application for approval of close boarded timber fence at North Eastern boundary."
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The development the subject of this appeal has already taken place.
3. Following the removal of a hornbeam hedge, planning permission was granted for development of a Hornton stone wall, to match Hornton House and surrounding properties, in 2016¹. This permission was not implemented. The appellant states that this was due to concerns in respect of foundations.

Main Issue

4. The main issue in this case is the effect of the proposed development on the character and appearance of the Fenny Compton Conservation Area.

Reasons

5. The appeal property is a two storey extended period dwelling built from local Hornton stone and dating from the 17th Century. It is located towards the corner of Brook Street and Bridge Street, such that its gable end is adjacent to the footpath along Brook Street.
6. Hornbeam House is located within the Fenny Compton Conservation Area, which is largely residential and is characterised by stone built dwellings, including many period properties. Stone and brick boundary walls are a distinctive local feature which, along with the presence of occasional grass verges, trees and

¹ Ref: 16/00341/FUL.

planting, make a significant, positive contribution to the appearance of the Conservation Area.

7. The appeal property is also located in the Cotswold Fringe Special Landscape Area, afforded protection for its inherent value by policy CS.12 of the Stratford-on-Avon Core Strategy.
8. During my site visit, I observed that brick and stone-built boundary walls along Brook Street provide for an attractive sense of enclosure in keeping with the Conservation Area's attributes. They combine with the presence of occasional grass verges and mature planting to afford a strong sense of the Conservation Area's distinctive qualities.
9. The development the subject of this appeal comprises a tall close-boarded fence, running from the gable end wall of Hornbeam House along Brook Street for some considerable distance.
10. During my site visit, I observed that the fence, due to its height, length and close-boarded timber materials, appears out of keeping with its setting along this part of Brook Street, where no similar boundary features exist.
11. The harmful impact of the above is exacerbated as a result of the fence drawing attention to itself as an intrusive feature, such that the eye is drawn away from the attractive period cottages on the opposite side of Brook Street and towards the fence, which grabs attention as an unduly dominant, starkly urban feature. As a consequence of this, the fence appears incongruous in its surroundings, contrasting with, and detracting from, the qualities of the Conservation Area identified above.
12. Taking all of the above into account, I find that the development harms the character and appearance of the Fenny Compton Conservation Area. This is contrary to the National Planning Policy Framework (the Framework) and Stratford-on-Avon Core Strategy Policies CS.8, CS.9 and CS.12, which together amongst other things, protect local character.
13. Rather than make the positive contribution desired by paragraph 131 of the Framework, the development harms local character. The harm caused would be significant in terms of the immediate context of the proposal, but is less than substantial in the context of the Conservation Area as a whole. In these circumstances, paragraph 134 of the Framework requires the harm to be weighed against any public benefit.
14. The appellant states that the development preserves the existing telecom network. However, there is no substantive evidence to demonstrate that this could not be achieved by any other means and consequently, I find that there is no public benefit arising that outweighs the harm to the Conservation Area, a designated heritage asset.

Other Matters

15. The appellant states that the fence provides for privacy and prevents an energetic dog from causing disturbance. However, there is no substantive evidence to demonstrate that the development comprises the only means of providing for privacy and enclosure.

Conclusion

16. For the reasons given above, the appeal does not succeed.

N McGurk

INSPECTOR

Appendix F

**Letter dated 23 May 2018 to appellant from LPA informing consideration of
Enforcement Notice**

Direct Line : 01789 260 401
Fax : 01789 260 630
e-mail : erin.weatherstone@stratford-dc.gov.uk
My ref : 16/00580/HHENF
Your ref :
Date : 23rd May 2018



Ms H L Holmboe
Hornbeam House
1 Brook Street
Fenny Compton
Southam
CV47 2YN

Robert Weeks
Head of Planning & Housing

Dear Ms Holmboe,

Planning Enforcement Investigation Reference: 16/00580/HHENF

Allegation: Without planning permission the erection of a close boarded timber fence measuring approximately 2.5m in height adjacent to a highway used by vehicular traffic.

Address: Hornbeam House, 1 Brook Street, Fenny Compton, Southam, CV47 2YN

I write in relation to the above planning enforcement case following the refusal of planning application 16/03041/FUL and determination of the associated appeal which was dismissed.

As the above planning application has been refused and the subsequent appeal dismissed please note that I have been tasked with reviewing the associated planning enforcement case.

I can confirm that a breach in planning control has occurred which needs to be remedied. In light of the above the District Council proposes to take formal enforcement action (in the form of an Enforcement Notice) directed against the breach in planning control identified.

You should be aware that if an Enforcement Notice is issued it will be recorded with the Council's Land Charges section and there may be implications for the future sale of the property, as such Notices are not removed from the Council's registers and are retained as part of the planning history of the site.

Stratford District Council is always prepared to give advice and assistance, so should you require any clarification on any of the above or have any questions please do contact me directly on the number above.

I anticipate that you will receive no further correspondence from us prior to the instigation of formal enforcement action however should you wish to regularise the breach you should do so forthwith and contact me as soon as you have done so.

I regret that it has become necessary for the District Council to take formal enforcement action to resolve this matter. However, in view of the absence of progress to resolve the situation, there may be no alternative option.

Yours sincerely

A handwritten signature in black ink, appearing to read "Erin Weatherstone".

Erin Weatherstone
Senior Planner (Enforcement)

Elizabeth House
Church Street
Stratford-upon-Avon
CV37 6HX

telephone 01789 267575

minicom 01789 260747

website www.stratford.gov.uk

DX700737 STRATFORD-ON-AVON 2

Appendix G

**Letter from Agent dated 06 June 2018 to LPA following appellant's receipt of letter
from LPA 23 May 2018**

10 Village Cottages Lower Quinton
Stratford upon Avon CV37 8SH
www.arq.me.uk miles@arq.me.uk
+44 (0) 1789 721823



**Erin Weatherstone
Senior Planner (Enforcement)
Stratford on Avon District Council
Elizabeth House
Church Street
Stratford upon Avon
CV37 6HX**

**06 June 2018
(By Email and Post)**

Dear Erin Weatherstone

Ref: 16/00580/HHENF and 16/03041/FUL Fence at Hornbeam House, CV47 2YH

Thank you for your time on the 'phone during our conversation on 31st May 2018.
Your letter of 23rd May has been passed to me by the applicant for comment.

In order to move forward I would propose that we, as respective parties to this Planning Enforcement Investigation, discuss, as far as reasonably possible, a mutually acceptable resolution to this breach of Planning Control. In order to do so I would firstly like to clarify (between ourselves) the basis upon which the fence at Hornbeam House is in breach, since there is some inconsistency and potential opportunity for confusion within documents received on this matter to date.

Whilst it is evident that application 16/03041/FUL was refused and Appeal APP/J3720/D/17/3170381 dismissed, I would like, at this stage, to review the original criteria for refusal: That the fence was deemed not to accord with local policies CS.8, CS.9 and CS.12

Policy CS.12 was cited as a basis for refusal in the original application due to the application site being within the 'Cotswold Fringe Special Landscape Area'.
It is not.

This matter was discussed in the appeal statement but not addressed by the Planning Inspector in her dismissal statement other than to confirm (incorrectly) that the site is located within this Area. Published maps of the District's Special Landscape Areas are not clear as to whether the site is located within such a designation but we should clarify and agree, with certainty, that it is not within that identified as Cotswold Fringe. As a recorded part of the reasoning (and therefore evidence) for both refusal and dismissal I consider this matter significant.

Policies CS.8 and CS.9 relate to the relationship between the application site and its location within a Conservation Area. In this respect the Planning question is whether or not the fence constitutes 'harm' and to what extent this 'harm', on balance, impacts upon the public realm and its interest in terms of the property and its wider context:

Hornbeam House is (significantly) located at the edge of Fenny Compton's Conservation Area. Whilst at the corner of a street described as being of '*attractive period cottages*' we should - when making any assessment of such (continuing) harm, weigh that proximity equally against its adjacency to several properties clearly dating from the later part of the 20th Century.

The refusal notice of 9th December 2016 determines that the fence constitutes 'less than substantial harm'. As such the Planning Inspector's reasoning includes (in paragraph 10) the opinion that the fence

"appears out of keeping with its setting along this part of Brook Street, where no similar boundary features exist."

However, both the application statement and appeal statements show a photo of a similar close boarded fence along the boundary of the adjacent property - 'Three Ways' - to the West.

The Inspector additionally views the fence with a number of negative, subjective evaluations in paragraph 11, claiming that it *grabs* (visual) *attention* within the streetscape. It is the significance of this aspect, in terms of design, height and position that should form the basis of any further assessment of impact that the fence has (and continues to have) in terms of public interest and whether or not its direct removal (or perhaps amelioration) may result in an improved landscape should enforcement of the refusal be directly actioned.

We should be clear, in addition, that the fence does not cause any issues of public or private safety in terms of its proximity to the highway. County Highways were consulted on this matter in a previous application (16/0341/FUL) for a wall of similar height and location and raised no objection.

Finally, we should also be clear, in further mitigation, that unless the District has any other evidence to the contrary, the only objection to the application for the fence or wall was made by Councillor Chris Williams on 30th October 2016. The applicants have not personally received any comments, letters or approaches to complain about obstruction of view, harm to the street scene or wider environment or that others' lives have been disadvantaged in any way. In fact, although 'anecdotal' (in terms of lack of documentary evidence) they have in fact received wholly positive comments from neighbours about the fence. The extent to which a Planning Control transgression is deemed unacceptable must also include some dimension of public interest or nuisance when considering further action. Here it is based entirely on interpretation of policy.

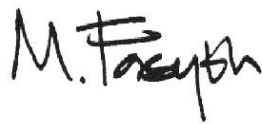
Conversely it is of note that removal of the fence and the subsequent negative impact upon the applicant's sense of privacy and security would be significant. As occupants who value their privacy and security very highly they would consider that removal of the fence and the subsequent visual exposure of their home and its windows to the adjacent public space would conflict with Article 8 of the European Convention of Human Rights - *(the) Right to Respect for Private and Family Life*.

On balance therefore and with the perceived conclusion that any enforcement proceedings would be of a 'Desirable' priority level (and not 'Critical', of 'Significant Impact' or of 'High Public Interest') we would like to suggest that a way of reducing the apparent deleterious visual impact of the fence (which would seem to be the core matter of public interest) would be to plant a suitable foliage screen in front of the fence on the highway side in order to screen and soften its impact. To this end and in order to ameliorate the visual impact mentioned the applicants have planted climbing roses (<https://www.davidaustinroses.co.uk/the-generous-gardener-climbing-rose>) on the highway side of the fence. This variety is advised as being able to range up to a height of 4.5m (the fence is around 2m high).

We would be happy to make a further Planning Application in respect of this, if considered appropriate, to formalise this proposal. It may be possible, in addition, to add in additional plant species as deemed necessary.

We welcome your agreement to or comments on this suggestion as a way to ameliorate the considered visual impact. We trust that this proposal might conclude or suspend further action against this breach of Planning Control.

With thanks and kind regards

A handwritten signature in black ink, appearing to read 'M. Forsyth'. The signature is written in a cursive, slightly stylized font.

Miles Forsyth
Arq Consulting

cc Kaja Holmboe

Appendix H

Letter of support from neighbour - RobertPurse - dated 16 June 2018

Mr R. Purse,
Dharan, 11 Brook Street,
Fenny Compton, Southam,
Warwickshire, CV47 2YH.

Tel: 01295 770096
Mob: 07768603492
Email: robert@robertpurse.co.uk

16th June 2018

Dear Madam/Sir,

I am baffled by the planning authority's objection to the erection of the fence at 1 Brook Street, which is also known as Hornbeam Cottage. As a long time (35 years) resident of Brook Street I am at a complete loss to understand the authority's objection. My wife and I live almost directly opposite 1 Brook Street and we have no objection whatsoever to the fence.

The fence is actually less intrusive than the previously existing hornbeam hedge, which had been allowed to grow uncontrolled. It is worthy of note, I believe, that there are many and various fences within the Conservation Area. These fences are of different designs, heights, and finishes. To suggest that the fence at 1 Brook Street is in some way at odds with the general environment would be spurious. One of the attractions of the village is the blended mix of architectural styles, building materials, and external finishes.

If an appeal is launched against the planning authority's decision, we will support that appeal.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Robert Purse', with a stylized flourish at the end.

Robert Purse

Subject: Confirmation of Appeal APP/J3720/C/18/3207050
From: <noreply@pins.gsi.gov.uk>
Date: 13/07/18 10:40
To: <miles@arq.me.uk>



Appeals Casework Portal

Your Enforcement Notice appeal has been received and a reference number assigned:

Appeal Details

Appeal Reference: APP/J3720/C/18/3207050
Appeal Receipt Date/Time: 13/07/2018 10:40
Appeal By: Kaja Bjelke-Jones
Site Address: Hornbeam House CV47 2YH
Local Planning Authority: Stratford-on-Avon District Council

Attached is a copy of your appeal form.

Important Information: An email has been sent to the Local Planning Authority (LPA) advising them that an appeal has been made. You **must** now send them a completed copy of the appeal form and supporting documents (including your full grounds of appeal). You can do this via email by:

- opening and saving a copy of your appeal form;
- locating your [Local Planning Authority's email address](#);
- attaching the saved appeal form plus all supporting documents.

Please quote your appeal reference number(s) on any future correspondence to us to avoid any delays. If forwarding the supporting documents by email please send to appeals@pins.gsi.gov.uk. If posting, please enclose the section of the form that lists the supporting documents and send to Initial Appeals, The Planning Inspectorate, Temple Quay House, 2 The Square, Bristol, BS1 6PN.

The Planning Inspectorate does not require paper copies of anything submitted electronically, we only require copies of documents marked as 'To follow' by post. However, please note that whilst we aspire to electronic working, it may at times be necessary for us to request hard copies of certain documents to ensure that they are formatted/printed in a consistent form for reference by all parties, particularly in relation to appeals proceeding by way of an oral event.

We will check the appeal to ensure it is valid. If we find your appeal is invalid, we have right to turn it away and we will write to you. If there is information missing we will write to request it. If your appeal is valid we will let you know how it will proceed. More information about the appeals process can be found on our [website](#).

What happens next

If your appeal is against an Enforcement Notice and a fee is due please pay this now

to your LPA (the amount can be found on the Notice) and let us know it's been paid (including who has paid if there are multiple appellants) by emailing ECAT@pins.gsi.gov.uk quoting the above reference number.

We have recently started a new way of processing these appeals which we hope will be faster and provide more clarity. We will check your appeal shortly after it has been submitted to ensure it is valid and all the necessary documents have been submitted. If you have not paid any fee due already we will request it within seven days as part of our early assessment of the appeal. Once we have checked your appeal we will contact you with information on the next steps.

You may wish to note the current average time for handling appeals is available on [GOV.UK](https://www.gov.uk).

If you have any queries, please contact our Customer Service Team via enquiries@pins.gsi.gov.uk

****Please do not reply to this message. - It is an automatically generated response from the mail delivery system.****

— Attachments: —

01 APPEAL FORM - 342824.pdf

86.7 kB

Direct Line :01789 260326

Fax : 01789 260207

e-mail : clare.eynon@stratford-dc.gov.uk

My ref : 16/00580/HHENF

Your ref :

Date : 11th June 2018

Ms K Holmboe
Hornbeam House
1 Brook Street
Fenny Compton
Southam
CV47 2YH



Robert Weeks
Head of Planning and Housing

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

Dear Sir/Madam,

Town and Country Planning Act 1990 (as amended)
Enforcement Notice at:
Hornbeam House, 1 Brook Street, Fenny Compton, Southam, CV47 2YH

This Council has issued an enforcement notice relating to the above land and I now serve on you a copy of that notice as you have an interest in the land, together with two further copies for you to use in a possible appeal application.

There is a right of appeal to the Secretary of State (at The Planning Inspectorate) against the notice. Unless an appeal is made, as described in these enclosures, the notice will take effect on **16 July 2018** and you must then ensure that the required steps, for which you may be held responsible, are taken within the period specified in the notice.

Please see the enclosed **information sheet** from The Planning Inspectorate which advises you how to make an appeal and please carefully read the **Annex** to the Enforcement Notice which informs you of your right to appeal.

Yours faithfully

A handwritten signature in black ink, appearing to be 'CE'.

Clare Eynon
Planning Manager
(Performance, Appeals and Enforcement)

Encs: 3 copies of Enforcement Notice
1 Information Sheet from The Planning Inspectorate

Elizabeth House
Church Street
Stratford-upon-Avon
CV37 6HX

telephone 01789 267575

minicom 01789 260747

website www.stratford.gov.uk

DX700737 STRATFORD-ON-AVON 2

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

**TOWN AND COUNTRY PLANNING ACT 1990
(as amended by the Planning and Compensation Act 1991)**

ENFORCEMENT NOTICE

ISSUED BY: STRATFORD-ON-AVON DISTRICT COUNCIL ("the Council")

1. **THIS IS A FORMAL NOTICE** which is issued by the Council because it appears to them that there has been a breach of planning control, within paragraph (a) of section 171A(1) of the above Act; at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the notice and enclosures to which it refers contain important additional information.

2. **THE LAND AFFECTED**

Hornbeam House, 1 Brook Street, Fenny Compton, Southam, CV47 2YH ("the Land"), shown edged red on the attached plan ("the Plan")

3. **THE BREACH OF PLANNING CONTROL ALLEGED**

Without planning permission the erection of a close boarded timber fence measuring approximately 2.5m in height adjacent to a highway used by vehicular traffic (in the approximate position marked A-B on the Plan).

4. **REASONS FOR ISSUING AN ENFORCEMENT NOTICE**

It appears to the Council that the above breach of planning control has occurred within the last 4 years.

1. The unauthorised fence by reason of its design, height and position is considered to introduce harm to the character of the area experienced within the 'locality' of Brook Street and would represent an unduly dominant stark urban feature which is at odds with the materials experienced within the streetscene and detracts from the cottages on the opposite side of Brook Street. The development is therefore considered to be contrary to Core Strategy Policy CS.9 of the adopted Stratford on Avon Core Strategy (2017-2031) and the guidance contained within the Council's District Design Guide and 'Extending Your Home' Planning Advice Note (2008).
2. The unauthorised fence by reason of its solid design, height and position is considered to introduce harm to the character of the area experienced within the 'locality' of Brook Street and would represent an unduly dominant stark urban feature which is at odds with the materials experienced within the streetscene and detracts from the cottages on the opposite side of Brook Street.

The unauthorised development is considered to introduce 'less than substantial harm' to the setting and special interest of the Conservation Area.

In the absence of any public benefits which outweigh the harm identified the development is contrary to Core Strategy Policy CS.8 of the adopted Stratford on Avon Core Strategy (2017-2031).

The District Council does not consider that planning permission should be granted because planning conditions could not overcome the objections to the development.

5. **WHAT YOU ARE REQUIRED TO DO**

- a) Remove the fence along the alignment A-B from the Land.

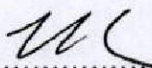
6. **TIME FOR COMPLIANCE**

- a) Within 4 months from the date this Notice takes effect

7. **WHEN THIS NOTICE TAKES EFFECT**

This notice takes effect on **16 July 2018** unless an appeal is made against it beforehand.

Dated: 11 JUNE 2018

Signed.....
Clare Eynon - Planning Manager
(Performance, Appeals & Enforcement)

On behalf of:-

Stratford-on-Avon District Council,
Elizabeth House,
Church Street,
STRATFORD-UPON-AVON,
Warwickshire. CV37 6HX



16/00580/HHENF
Hornbeam House, 1 Brook Street, Fenny Compton, Southam, CV47 2YH

Scale 1:500



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Ordnance Survey 100024287



ANNEX

YOUR RIGHT OF APPEAL

If you decide that you want to appeal against the enforcement notice you must ensure that you send your appeal soon enough so that normally it will be delivered by post/electronic transmission to the Secretary of State (at The Planning Inspectorate) before **16 July 2018**.

Under section 174 of the Town and Country Planning Act 1990 (as amended) you may appeal on one or more of the following grounds:-

(a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;

(b) that those matters have not occurred;

(c) that those matters (if they occurred) do not constitute a breach of planning control;

(d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;

(e) that copies of the enforcement notice were not served as required by section 172;

(f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;

(g) that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

Not all of these grounds may be relevant to you.

If you appeal under Ground (a) of Section 174(2) of the Town and Country Planning Act 1990 this is the equivalent of applying for planning permission for the development alleged in the notice and you will have to pay a fee of £412 for the deemed application. You should pay the full amount of the fee to Stratford-on-Avon District Council.

If you decide to appeal, when you submit it, you should state in writing the ground(s) on which you are appealing against the enforcement notice and you should state briefly the facts on which you intend to rely in support of each of those grounds. If you do not do this when you make your appeal the Secretary of State will send you a notice requiring you to do so within 14 days.

If you submit a retrospective planning application after the enforcement notice is issued, the Local Planning Authority may decline to determine your application under section 70C of the Act (as amended). You cannot appeal against a decision to decline to determine your planning application. Therefore if the Local Planning Authority does decline any retrospective application the only way you could ask for the planning merits of the alleged development to be considered is to appeal on ground (a) on your enforcement appeal and pay the fee.

However if you (or anyone else) had already submitted a retrospective planning application and the enforcement notice is issued before the time to decide the application has expired, no-one can appeal against the enforcement notice on ground (a). Although a planning appeal can be pursued if the Local Planning Authority refuse or fail to determine the planning application. This is specified at section 174 (2A)(b) of the Act (as amended).

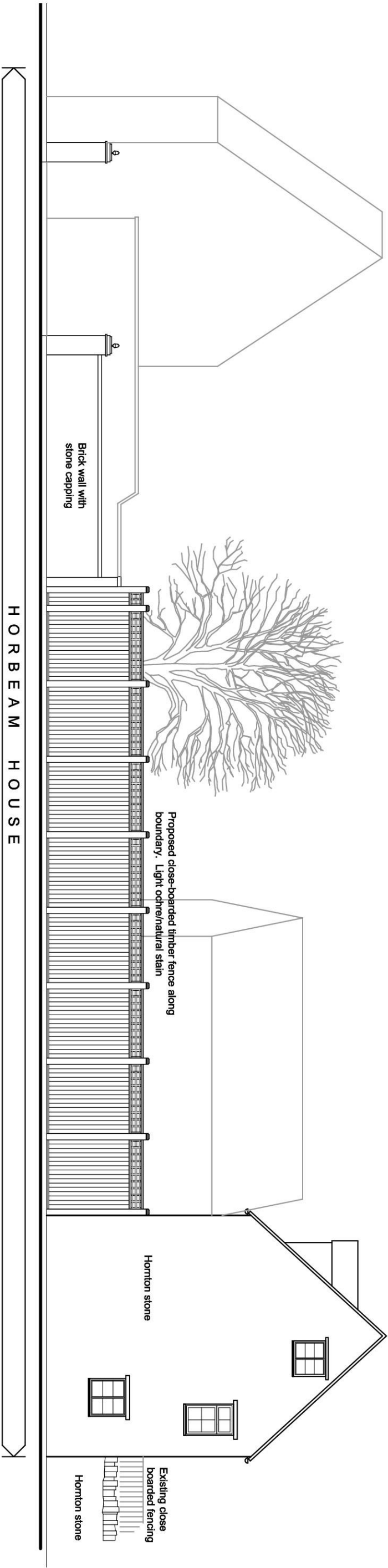
The Planning Inspectorate has published new guidance on how to Appeal against an Enforcement Notice. It relates to all Notices served on or after 6 April 2012.

WHAT HAPPENS IF YOU DO NOT APPEAL

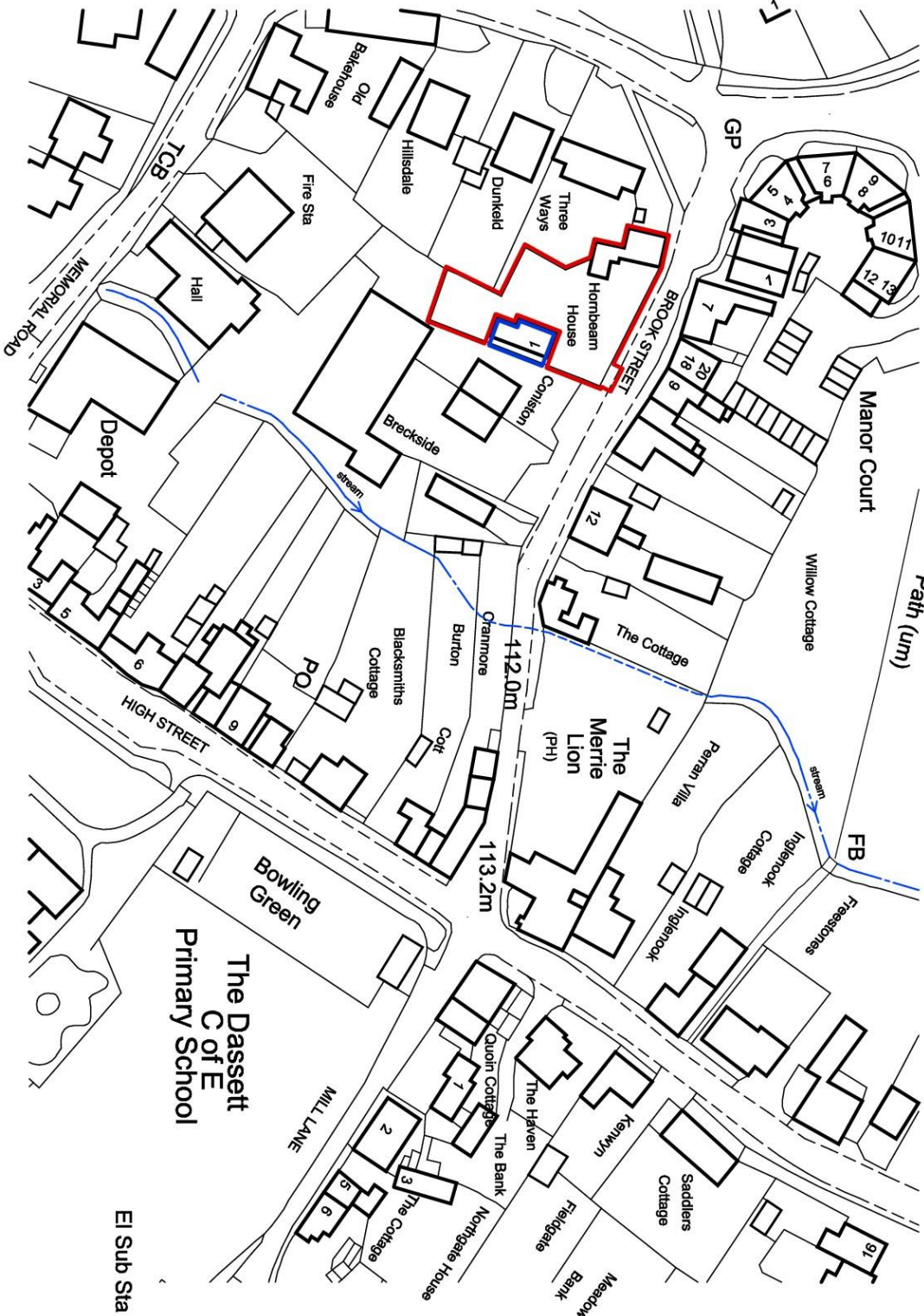
If you do not appeal against this enforcement notice, it will take effect on **16 July 2018** and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.

LIST OF NAMES AND ADDRESSES OF THE PERSONS ON WHOM A COPY OF THE ENFORCEMENT NOTICE HAS BEEN SERVED

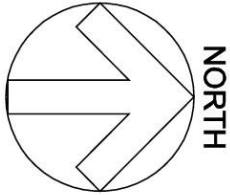
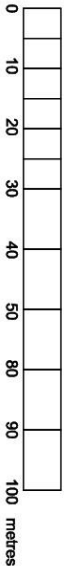
Ms Kaja Lisen Holmboe
Hornbeam House
1 Brook Street
Fenny Compton
Southam
CV47 2YH



PROPOSED NORTH EAST ELEVATION 1:100



LOCATION PLAN 1:1250



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Figured dimensions are to be used in preference to scaled dimensions.
All dimensions must be checked on site and all discrepancies reported immediately.

Rev A. Red and Blue Lines Revised Oct 2016



ARQ Consulting Limited
10 Village Cottages, Lower Quinton CV37 8SH
miles@arq.me.uk
www.arq.me.uk

PROJECT: Proposed Garden Fence at:
ADDRESS: Horbeam House
Brook Street, Fenny Compton

CV47 2YH

DRAWING: NE Elevation & Location Plan

SCALE: 1:100 & 1:1250 @ A3

DATE: September 2016

DRAWING No: Sheet 1A

REVISION: